



Statement before the Joint Economic Committee
On the Economic Impacts of the 2020 Census and Business Uses of Federal Data

America's Invisible Felon Population: A Blind Spot in US National Statistics

Dr. Nicholas Eberstadt
Henry Wendt Chair in Political Economy

May 22, 2019

The American Enterprise Institute (AEI) is a nonpartisan, nonprofit, 501(c)(3) educational organization and does not take institutional positions on any issues. The views expressed in this testimony are those of the author.

Mister Chairman, Madame Vice Chair, Members of the Committee, distinguished co-panelists, and guests:

America's statistical agencies are the eyes and ears of our democracy. When they are functioning properly, they provide essential information to help the public and its elected representatives see what is going right in our country—and what is going wrong. Such information is crucial for forming a more perfect union. Without timely and accurate information on our domestic problems, our government cannot hope to address these problems swiftly, much less effectively. Whether you are a progressive or a conservative, in favor of more government or less, you need good data to inform your own efforts to make our country better.

The US was the first government in the modern era to recognize the importance of evidence-based public policy.¹ Our Constitution mandated a decennial census—a truly revolutionary notion back in the late 18th century. Providing policymakers with accurate empirical information was essential, in the words of James Madison, “in order that they might rest their arguments on facts, rather than assertion and conjecture.”² And for most of our history, the US statistical system has been well ahead of the curve, if not a virtual wonder of the world.

Unfortunately, our government statistical services seem to have been falling away from the global forefront for at least a generation. And in key areas, our federal information systems have not kept up with the social and economic changes in our country that they should be helping us monitor. Sad to say, our statistical services are currently incapable of providing even the most basic facts and figures we need for confronting some of our new and pressing domestic social troubles.

In my book *Men Without Work: America's Invisible Crisis*, I tried to highlight our country's curious inattention to the collapse of work for grown men over the postwar era.³ Although their employment situation has been slowly improving since 2016, when my study was published, the latest Bureau of Labor Statistics jobs report (for April 2019) indicates that “work rates” (more technically, employment-to-population ratios) for working-age US men are nonetheless on par with the levels for 1939, as reported in the 1940 Census.⁴ In other words, today's employment situation for our country's civilian, noninstitutional, non-retirement-age men *is still a Depression-scale problem*.

Our failure to cope more expeditiously with this problem, I submit, is in part due to our failure to understand it—a failure, in turn, directly related to the inadequacy of our statistical services to illuminate this problem's important dimensions. I pointed then to a number of shortcomings and gaps in official statistical coverage that limit the information policymakers and concerned citizens should want to have about America's still-ongoing “Men Without Work” crisis.

Today I wish to point out just one of these gaps—but it is an enormous blind spot and, given the realities of life in our country today, a critical and inexplicable statistical oversight. I refer here to the virtual absence in our national statistical compendia of facts and figures about the country's arrested and sentenced populations. These are enormous populations in our country today—yet our government statistical systems can tell us almost nothing about them.

Over the postwar era, for good or ill, the US has seen an explosive surge in both arrests and felony sentencing for our adult population. Like it or not, this is a plain fact of life. In 2016, 110 million Americans had an arrest record with police authorities.⁵ That is over twice as many people as in 1997 (when the total was 54 million⁶) and works out to 44 percent of our adult population.⁷ Just over 91 million Americans that year were included in the Interstate Identification Index, the database the FBI uses to determine whether someone has a criminal record.⁸ That would be two-fifths of the US adult population in 2016.

What do we know about this huge contingent of people? Almost nothing. Age, sex, ethnicity, living arrangement, family situation, income, educational profile, health status, and all the rest of the data the US federal statistical system collects for our national population cannot be cross-referenced by arrest status, at least thus far

And the situation is even worse for demographic, social, and economic data on the population subject to felony sentencing. It is not just that the US government provides no information whatsoever on the social, economic, or health conditions of the men and women in America who have been convicted of a serious crime punishable by imprisonment for a year or more (the standard definition of a felony)—though this too happens to be the case. Astonishing as this may sound, the US statistical system does not even offer an estimate for the total size of the population of Americans who have a felony conviction in their background! Search as one might for even a rough estimate from official statistical authorities of America's convicted population, there is no government compendium to provide this information. So far as I can tell, US statistical authorities have never asked the question—and thus they do not have any ready means by which to answer it.

Fortunately, some intrepid demographers from the academy have attempted a demographic reconstruction of postwar state and national trends for the size of the US adult population sentenced to at least one felony conviction.⁹ According to their estimates, the total number of US adults in this “convicted” population shot up from fewer than two million persons in 1948 to nearly 20 million in 2010 (Figure 1). Their calculations imply that as of 2010, fully one in 12 adults in America bore a felony conviction in their past. A bit of additional arithmetic suggests that for men, the figure would have been over one in eight.¹⁰

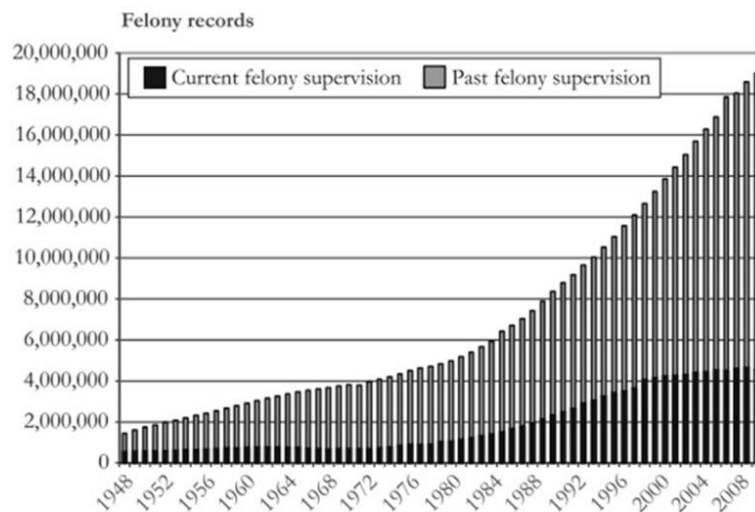


Figure 1. Estimated Population of Felons and Ex-Felons: US, 1948–2010

Source: Sarah K. S. Shannon et al., “The Growth, Scope, and Spatial Distribution of America’s Criminal Class, 1948–2010,” *Demography* 54 (2017): 1795–818,
http://users.soc.umn.edu/~uggen/Shannon_Uggen_DEM_2017.pdf.

Naturally the criminal justice system has continued to arrest, convict, and sentence offenders since 2010. Rough calculations suggest that the total population with a felony in America today (2019) might equal or exceed 24 million.

The American public is greatly concerned about the phenomenon sometimes referred to as “mass incarceration”—and rightly so. As of year-end 2016, well over two million person were behind bars in correctional facilities in the US.¹¹ Usually missing from the conversation about mass incarceration, however, is any recognition that imprisoned or detained Americans currently represent barely one-tenth of the total population of felony convicts. As a ballpark estimate, over 20 million Americans in society at large currently have a felony in their past, and this immense population is effectively statistically invisible. The Census Bureau, the Bureau of Labor Statistics, the Centers for Disease Control—none can tell us practically anything about conditions of life for these tens of millions of Americans.

The fragmentary data that can be pieced together, however, hint that felons in the general population may pay a high long-term price for their crimes, even after they have paid their debt to society. Some longitudinal surveys, for example, indicate that, irrespective of ethnicity or education, a working-age man in the civilian noninstitutional population is far more likely to be out of the labor force altogether than a counterpart who has only an arrest in his background, and

that man with an arrest record is much more likely to be out of the labor force than a counterpart who has no history of trouble with the law.¹² (See Figure 2.)

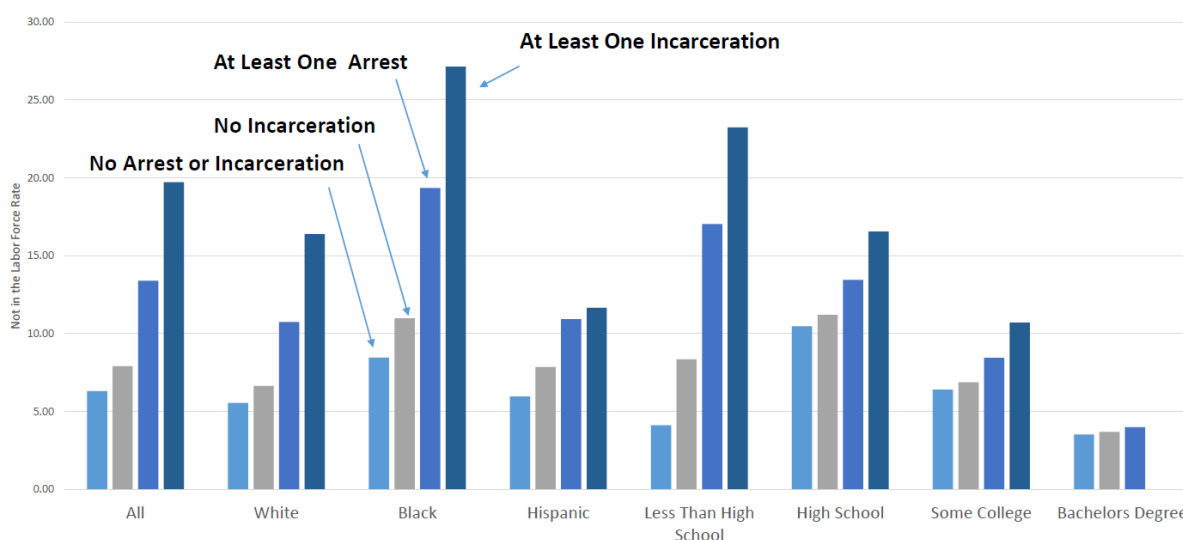


Figure 2. Percentage of US Men (30–34) out of the Labor Force by Ethnicity, Education, and Criminal Justice System History, 2013

Note: Definition of “out of labor force” in this figure differs from the Bureau of Labor Statistics definition. See text for discussion.

Source: Nicholas Eberstadt, *Men Without Work: America’s Invisible Crisis* (West Conshohocken, PA: Templeton Press, 2016), 143.

This troubling correlation has a direct bearing on our current “Men Without Work” problem, considering that something like one in eight unconfined adult men nowadays may have a felony conviction in his past—and that the corresponding ratio for prime working-age men (age 25–54) today is no doubt appreciably higher.

What accounts for that grim gradient in Figure 2? There are many possible explanations, but we lack most of the data we would want to test these various hypotheses. And needless to say, evidence-based policies to help reintegrate ex-cons and ex-felons back into the labor force, and into families, and into society more generally require evidence in the first place.

The circumstances of Americans who have had trouble with the law should not be a matter of utter indifference to a forgiving society, much less to the elected representatives entrusted with shaping and administering its policies. It is shocking—I would dare say shameful—that our statistical system should so entirely neglect the plight of this huge, stigmatized, and disadvantaged population in our society.

We have a chance to end this statistical darkness. Including just one or two questions on criminal justice system history in the American Community Survey (ACS) could end this not-so-benign neglect.

There are technical issues with including these questions. And at this juncture, including these questions in the 2020 Census and 2020 ACS is not legally or administratively feasible, given the provisions of the Census Act.¹³ But including them in due course is the right thing to do. Furthermore, there are other expeditious and less cumbersome ways to end this darkness immediately, at least in good part—such as by using linked administrative data files from the Bureau of Justice Statistics and the Census Bureau’s Current Population Survey. This would provide an aperture into the lives and conditions of the millions of Americans in society at large who live under “community supervision,” either via parole or probation.

Irrespective of future policing and judicial policies, the population of arrested Americans and Americans with a felony is on track to continue to grow for many years to come—quite possibly for decades to come. For obvious reasons, approaches to reentry and rehabilitation today remain mainly anecdotal. It is past time to begin resting those arguments on facts.

¹ Nicholas Eberstadt et al., “*In Order That They Might Rest Their Arguments on Facts*”: *The Vital Role of Government-Collected Data*, Hamilton Project and American Enterprise Institute, March 2, 2017, http://www.hamiltonproject.org/papers/in_order_that_they_might_rest_their_arguments_on_facts_the_vital_role_of_go.

² National Archives, Founders Online, “Census, [2 February] 1790,” accessed April 11, 2019, <https://founders.archives.gov/documents/Madison/01-13-02-0017>; and Charles F. Hobson and Robert A. Rutland, editors, *The Papers of James Madison*, vol. 13, 20 January 1790–31 March 1791 (Charlottesville, VA: University Press of Virginia, 1981), 15–16.

³ Nicholas Eberstadt, *Men Without Work: America’s Invisible Crisis* (West Conshohocken, PA: Templeton Press, 2016).

⁴ Nicholas Eberstadt, “Understanding America’s ‘Men Without Work’ Problem: The Role for Ethnographic Insights,” American Enterprise Institute, unpublished.

⁵ Becki R. Goggins and Dennis A. DeBacco, “Survey of State Criminal History Information Systems: A Criminal Justice Information Policy Report, 2016,” US Department of Justice, Bureau of Justice Statistics, February 2018, Table 1, <https://www.ncjrs.gov/pdffiles1/bjs/grants/251516.pdf>.

⁶ US Department of Justice, Bureau of Justice Statistics, “Survey of State Criminal History Information Systems, 1999,” October 2000, 17, <https://www.bjs.gov/content/pub/pdf/sschis99.pdf>.

⁷ Derived from US Census Bureau, “American FactFinder,” <https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>. The adult population is defined as men and women 18 years of age and older.

⁸ Goggins and DeBacco, “Survey of State Criminal History Information Systems,” Table 20.

⁹ Sarah K. S. Shannon et al., “The Growth, Scope, and Spatial Distribution of People with Felony Records in the United States, 1948–2010,” *Demography* 54, no. 5 (October 2017): 1795–818, <https://link.springer.com/article/10.1007%2Fs13524-017-0611-1>.

¹⁰ Eberstadt, *Men Without Work*, 134.

¹¹ Danielle Kaeble and Mary Cowhig, “Correctional Populations in the United States, 2016,” US Department of Justice, Bureau of Justice Statistics, April 2018, 2, <https://www.bjs.gov/content/pub/pdf/cpus16.pdf>.

¹² Eberstadt, *Men Without Work*, 129–148.

¹³ US Census Bureau, “Questions Planned for the 2020 Census and American Community Survey,” March 2018, <https://www2.census.gov/library/publications/decennial/2020/operations/planned-questions-2020-acps.pdf>.